



UNITED STATES PATENT AND TRADEMARK OFFICE

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236 WEST PORTAL AVENUE
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SAN FRANCISCO, CA 94127-1423

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JAN 25 2007

OFFICE OF PETITIONS

In re Application of :
Andrew J. Toli :
Application No. 10/693,263 : DECISION ON PETITION
Filed: October 23, 2003 :
Attorney Docket No. 50604 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 11, 2006, to revive the above-identified application.

The petition is dismissed as moot for the reason stated below.

A Notice of Abandonment was mailed on June 26, 2006 stating that this application is abandoned for failure to timely reply to the Office action of "9/19/06" [sic, 9/19/05]. However, the Notice of Abandonment was prematurely mailed and is hereby vacated for the following reason. A review of the file record discloses that a Notice Requiring Excess Claims Fees of \$200 was mailed on April 7, 2006. The Notice set a period for reply of one (1) month or thirty (30) days, whichever was longer. It also stated that extensions of time pursuant to the provisions of 37 CFR 1.136(a) were available. Accordingly, a reply was due on or before May 7, 2006, or on or before October 7, 2006 with the appropriate extension of time obtained pursuant to the provisions of 37 CFR 1.136(a).


The present petition was filed on August 11, 2006, within four months of the Notice of April 7, 2006. As extensions of time under 37 CFR 1.136(a) were available at the time of submission of the present petition to revive, the petition was prematurely filed. Accordingly, the fee of \$1,500 assessed to petitioner's deposit account for this petition was unnecessary and will be credited to petitioner's deposit account in due course. Further, as authorized in the "Reply to 04/07/2006 Notice," and as agreed to by petitioner herein in a conversation with the undersigned on January 18, 2007, the \$1,590 four month extension of time fee due

at the time of filing the petition to revive will be charged to petitioner's deposit account.

Petitioner states that the Notice of April 7, 2006 requiring a \$200 balance due for claim fees is believed to be in error, since the amendment mailed on February 21, 2006 (and received in the USPTO on February 23, 2006) did not add an independent claim, but did include a dependent claim, which increased the total number of claims from 5 to 6.

This application is being forwarded to Technology Center Art Unit 3682 for appropriate action on the reply received February 23, 2006 and for review of the requirement made in the April 7, 2006 Notice for a \$200 claim fee. If the Technology Center deems the \$200 claim fee required by the Notice of April 7, 2006 to have been made in error, this fee, which was submitted with this petition, should be refunded to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions



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In re Application of :
Andrew J. Toli :
Application No. 10/693,263 : NOTICE
Filed: October 23, 2003 :
Attorney Docket No. 50604 :


This is a notice regarding your request filed July 8, 2005 for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED.**

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate, absent further notification from a proper party of a change in status. See 37 CFR 1.27(c)(2).

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions